

B

United States District Court – District of Massachusetts

If You Are a Medicare Part B Beneficiary And Made a Co-Payment (or Are Obligated to Make a Co-Payment) Through Medicare Part B For Any of the Drugs Listed Below, or Are the Heir to Someone Fitting this Description

A Class Action Lawsuit May Affect Your Rights.

Defendants propose the inclusion of the following sub-heading in lieu of Plaintiffs' sub-heading:

Class Action Lawsuits May Affect Your Rights

The District Court has authorized this Notice. It is not a solicitation from a lawyer. You are not being sued.

- A lawsuit claims that certain drug companies reported false and inflated average wholesale prices ("AWP") for certain types of outpatient drugs. AWP's are used to set prescription drug prices that are paid by Medicare and consumers making Medicare Part B co-payments. The lawsuit asks the Court to award money damages to people who made Medicare Part B co-payments for the drugs .
- The Court has said that the lawsuit can go forward on behalf of a "Class" of people that made Medicare Part B co-payments for certain drugs ("Covered Drugs").
- The Class consists of people who made co-payments for Covered Drugs manufactured and marketed by Defendants AstraZeneca, Bristol-Myers Squibb Group and Johnson & Johnson Group. Certain dosages of the following Covered Drugs are included in the Class: **Blenoxane, Cytosan, Etopophos, Paraplatin, Procrit, Remicade, Rubex, Taxol, VePesid and Zoladex.**
- The Court has said that the lawsuit can proceed on behalf of people who made co-payments for Covered drugs between January 1, 1991 and December 31, 2004. See Questions 8 and 10 to see if you are a Class Member.
- A series of trials will determine whether the claims in this lawsuit against the Defendants listed above are true. The first trial will begin on September 25, 2006, with AstraZeneca.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

[Defendants object to including this number on all pages. This Notice comes from the Court; the content of the 800# and website have not been settled.]

➤ These lawsuits are not about the safety and effectiveness of these drugs.

This Notice explains what your rights and choices are as a member of the Class. ***You must make a choice now regarding your rights. Please read all of this Notice carefully.***

[Defendants object. Plaintiffs' introduction is (1) confusing (2) inaccurate in that it does not correctly describe the class composition; (3) needlessly inserts Plaintiffs' position without mentioning Defendants; and (4) includes Class III.]

ACCORDINGLY, DEFENDANTS PROPOSE:

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. There are class action lawsuits pending in the United States District Court for the District of Massachusetts under the name *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MultiDistrict Litigation No. 1456, Docket No. 01-CV-12257-PBS.

These class actions are about the amount Medicare Part B beneficiaries paid for certain drugs. These lawsuits are not about the safety or effectiveness of these drugs.

The Court has not yet decided the outcome of this litigation. The Court has approved the text of this Notice and authorized its publication. However, this Notice is not an expression of the Court's view as to the merits of any claims or defenses asserted by the parties.

You may be a member of one or more of the classes. This Notice explains your rights and the choices you must make as a member of one or more of the classes. PLEASE READ THIS NOTICE CAREFULLY.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

A SUMMARY OF YOUR RIGHTS AND CHOICES:

You May:		Due Date
Remain in Lawsuit	<p><i>Stay in the lawsuit and wait for the result.</i> By doing nothing, you stay in the lawsuit and may share in any recovery, if there is one, but you give up the right to sue the Defendants yourself about the claims in the lawsuit.</p>	<u>Do Nothing</u>
Exclude Yourself	<p><i>Get out of the Class.</i> You can write and ask to get out of the lawsuit. If any money or benefits are awarded later in a trial or settlement, you will not get these benefits, but you keep the right to sue the drug companies on your own about the claims in the lawsuit. See Questions 10 and 11.</p>	<u>Postmarked by</u> September 15, 2006
Appear In The Lawsuit	<p><i>Participate in the lawsuit on your own or through a lawyer.</i> If you don't exclude yourself, you can appear and speak in the lawsuit on your own or through your own lawyer. (Class Counsel has been appointed to represent you) See Questions 13 and 14.</p>	

[Defendants object. The descriptions are one-sided in that they suggest that class members are choosing between receiving money or not receiving money. Plaintiffs also fail to inform class members that they will have to present evidence as to their own claims in order to recover. Defendants also object to the statement that Class Counsel will represent the class at no cost.]

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

WHAT THIS NOTICE CONTAINS

Basic Information	Page
1. Why did I get this Notice?	
2. What is this lawsuit about?	
3. Why is this a class action?	
The Claims In The Lawsuit	Page
4. What does the lawsuit claim?	
5. What do the Defendants say about the lawsuit?	
6. Has the Court decided who is right in the lawsuit?	
What are the Classes and Who are Class Members?.....	Page
7. How many Classes are there?	
8. Am I part of the Medicare Part B Class?	
9. How do I know if my co-payment was under Medicare Part B?	
10. Am I part of the Massachusetts Class?	
What are the Covered Drugs.....	Page
11. How can I tell if the drug I took is included as a Covered Drug?	
Your Rights – Getting Out of the Class Action.....	Page
12. Can I get out of the lawsuit and the Class?	
13. How do I exclude myself from the Classes?	
14. If I exclude myself, can I get any money or benefits from the lawsuit?	
Your Rights – Appearing In The Lawsuit.....	Page
15. Can I appear or speak in this lawsuit?	
16. How do I appear in this lawsuit?	
If You Do Nothing.....	Page
17. What happens if I don't do anything at all?	
The Lawyers Representing You	Page
18. Do I have a lawyer in this lawsuit?	
19. Who pays the lawyers and how much will they be paid?	
20. Should I get my own lawyer?	
Getting More Information	Page
21. Are more details and information available?	
22. How will I be notified about the outcome of the trials?	Page

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

BASIC INFORMATION

1. Why did I get this Notice?

A lawsuit has been filed against a number of drug companies on behalf of people who paid for one or more of the drugs – called “Covered Drugs” – see Question 9. You received this Notice because records obtained from the center for Medicare and Medicaid Services indicate that you may have made a co-payment for a Covered Drug between January 1, 1991 and December 31, 2004. If so, the lawsuit may affect you.

You have legal rights and choices to make before a trial will decide whether the claims being made against the Defendant drug companies on your behalf are true. The first of a series of trials begins on September 25, 2006. **You must make you choice whether to remain in the class or exclude yourself before September 15, 2006.**

This Notice explains:

- What the lawsuit is about, and why it is a class action lawsuit.
- What the lawsuit claims and what the drug companies say about the claims.
- Who is affected by the lawsuit.
- Who represents the class in the lawsuit.
- What your legal rights and choices are.
- How and by when you need to act.

[Defendant’s object. The language (1) suggests that only one trial will occur and (2) does not include individuals who did not make a payment, but incurred a “legal obligation” to do so. In addition, Plaintiffs version provides incorrect dates for the class period]

ACCORDINGLY, DEFENDANTS PROPOSE:

Class action lawsuits have been filed against several drug companies on behalf of people covered by Medicare Part B who paid a percentage co-payment for certain drugs that are listed below.

You received this notice because you requested more information about this lawsuit and/or records obtained from the Center for Medicare and Medicaid Services indicate that you are a Medicare Part B beneficiary who received one or more of the subject drugs between January 1, 1991 and January 1, 2005 and that you may have either paid a co-payment to your doctor for a portion of the bill, or may be under a “legal obligation” (explained further below) to pay. If so, these lawsuits may affect you.

You received this notice because you have legal rights and choices to make before trials will decide whether the claims being made against the Defendants are valid. The first trial will begin on _____, 2006. You must make a choice whether to remain in one or more of the classes or exclude yourself before _____, 2006.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

2. What is this lawsuit about?

Plaintiffs allege Defendant drug companies either report the average wholesale price (“AWP”) of each drug they make to trade publications or provide those publications with information from which the publications calculate an AWP for each of Defendants’ drugs. The published AWP of a drug is used to set the price that consumers making Medicare Part B co-payments and Medicare will pay for the drug. The lawsuit claims that Medicare and consumers making Medicare Part B co-payments paid more than they should have paid for the Covered Drugs because drug companies intentionally reported false and inflated AWP’s concerning these drugs.

The Court in charge of the lawsuit is the United States District Court for the District of Massachusetts. The name of the lawsuit is *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, Docket No. 01-CV-12257-PBS. The people who sued are called the Plaintiffs. The drug companies they sued are called the Defendants.

The lawsuit includes 42 Defendants. At this time, the Court has certified the first phase of the lawsuit to begin with a trial of the claims against the following Defendants in the following order:

- AstraZeneca (which includes: AstraZeneca, PLC; AstraZeneca Pharmaceuticals L.P.; and AstraZeneca U.S.),
- The Bristol-Myers Squibb Group (which includes: Bristol-Myers Squibb Co.; Oncology Therapeutics Network Corp.; and Apothecon, Inc.),
- The Johnson & Johnson Group (which includes: Johnson & Johnson; Centocor, Inc.; Ortho Biotech Products, L.P.;, and

Whenever you see the word “Defendants” in this Notice, it includes only the companies listed above: AstraZeneca, Bristol-Myers Squibb Group, and Johnson & Johnson Group..

[Defendants object. Plaintiffs’ description is one-sided. Furthermore, Plaintiffs’ description does not inform class members that they may opt out of the lawsuit against one Defendant, but not another Defendant. Defendant AstraZeneca also objects to the inclusion of any entity by AstraZeneca Pharmaceuticals L.P.¹]

ACCORDINGLY, DEFENDANTS PROPOSE:

2. What are These Lawsuits About?

¹ Defendant AstraZeneca objects to Plaintiffs’ inclusion of AstraZeneca PLC and “AstraZeneca U.S.” in their definition of “AstraZeneca.” AstraZeneca Pharmaceuticals LP is the only defendant in this action. AstraZeneca PLC is not named as a defendant in the Fourth Amended Master Consolidated Class Action Complaint and “AstraZeneca U.S.” does not even exist.

Before you make a decision about your legal rights, it is important that you understand what these lawsuits are about. These lawsuits are about the amount Medicare Part B beneficiaries paid for certain drugs. There are several different classes involved in the case and you may be a member of one or more classes. The Defendant drug companies and the drugs involved in each class are as follows:

<u>Defendant Classes</u>	<u>Subject Drug(s)</u>
AstraZeneca Class	Zoladex (Goserelin Acetate)
Bristol-Myers Squibb Class	Blenoxane (Generic) Cytosan (Generic) Etopophos (Generic) Paraplatin (Generic) Rubex (Generic) Taxol (Generic) VePesid (Generic)
Johnson & Johnson Class	Remicade (Generic) Procrit (Generic)

For Medicare recipients who elected Medicare Part B coverage, Medicare paid for 80% of what a doctor charged for these drugs. The doctor was entitled to bill the patient not more than the remaining 20%. Between January 1, 1991 and January 1, 2005, the class action lawsuits allege that the price most doctors charged these drugs was the “average wholesale price,” or AWP.

Plaintiffs say that Medicare Part B beneficiaries paid their doctors too much for these drugs because the Defendants did not properly report the AWP for the drug or drugs and illegally reported inflated AWP's. Plaintiffs claim that this conduct violated the consumer protection laws of 44 states.

The Defendants deny the factual allegations being made; contend that the lawsuits and damages are precluded under the law; contend that the alleged conduct, if proved, does not violate the 44 consumer protection laws, and that many class members will not be able to establish elements required by the consumer protection laws, or prove they paid a doctor for the subject drugs. [NOTE: BMS objects to the failure of Plaintiffs' to include the fact that BMS did not report AWP's]

The Court has not yet ruled on many matters that can affect these lawsuits.

3. Why is this a class action?

In a class action lawsuit, one or more people called “class representatives” sue on behalf of people who have similar claims. The people together are a “class” or “class members.” The court must determine if it will allow the lawsuit to proceed as a class action. If it does, a trial of the claims then decides the lawsuit for everyone in the class. The Court in this lawsuit decided it could be a class action.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

[Defendants object. Plaintiffs suggest that a single trial will resolve all class members' claims without explaining that only common issues will be decided.]

ACCORDINGLY, DEFENDANTS PROPOSE:

3. Why Are These Class Actions?

In a class action, one or more people, called Class Representatives, sue on behalf of people like you who have at least one common issue, even though there are also individual issues for each class member. All of these people are a "Class" or "Class Members." One litigation resolves the common issues for all Class Members, except for those who exclude themselves from the class. The Court has already chosen Class Representatives for each class. This Notice will help you determine whether you are a Class Member.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

THE CLAIMS IN THE LAWSUIT

[Defendants object to this entire section (Nos. 4-6 below). This information is already provided in #2 above. Repeating the information is confusing. To the extent this section is included, #4 should state "What do the Plaintiffs claim?"]

4. What does the lawsuit claim?

The lawsuit claims that the Defendants violated various state consumer protection laws because they intentionally provided false and inflated AWP's on certain types of outpatient drugs, including the Covered Drugs. The lawsuit also claims that the Defendants intentionally reported inflated AWP's with the knowledge that Medicare Part B relies on reported AWP's to determine the prices they will reimburse doctors for those drugs. The lawsuit says that as a result of the inflated AWP's, people who made co-payments under Medicare Part B paid more than they should have. The lawsuit asks the Court to award money damages to those people.

5. What do the Defendants say about the lawsuit?

Defendants deny the factual allegations and claims being made. Specifically, the Defendants say that the lawsuits and any damages are prohibited under the law and that the alleged conduct, if proved, does not violate the 44 consumer protection laws under which the Plaintiffs claims are brought. The Defendants also say that the federal government created the AWP pricing system, despite decades of knowledge and criticism that AWP does not necessarily reflect the actual cost of these drugs. Finally, the Defendants say that many class members will not be able to prove they meet the requirements of the consumer protection laws that apply to prove they paid a doctor for these drugs.

6. Has the Court decided who is right in the lawsuit?

No. The Court hasn't decided who is right in the lawsuit yet. Much more must occur before the Court holds a trial, including notifying Class Members. By deciding now that the lawsuit can continue as a class action, the Court isn't saying who will win.

WHAT ARE THE CLASSES AND WHO ARE CLASS MEMBERS?

To know if you're affected by this lawsuit, you first should determine if you're a member of the Class.

7. Am I a Member of the Class?

[Defendants object. The only necessary information is provided in the section beginning "You are a member of one or more..." and ending "...should pay their doctor now." The rest of the information in this section is repetitive, confusing, and incomplete.]

You're a member of the Class and part of this lawsuit if you are a resident of any state in the U.S. (except the states listed below), and between January 1, 1991 and January 1, 2005, you paid (or are currently obligated to pay) a co-payment under Medicare Part B for any of the Covered Drugs (listed in Question 11) that were manufactured and marketed by the following three Defendants:

- AstraZeneca,
- The Bristol-Myers Squibb Group,
- The Johnson & Johnson Group, or

You are **not** a member of the Class if you resided in Alabama, Alaska, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Montana or Virginia at the time you made the co-payment. The Court excluded persons residing in these states from the Class because the consumer protection laws of those states don't allow class actions.

You are a member of the Class if you fulfill the criteria listed in either 1, 2, or 3 below.

1. You are in the class (a) if you were a Medicare Part B beneficiary between 1991 and the beginning of 2005, (b) who received one or more of the aforementioned drugs during that time period in any state EXCEPT Alabama, Alaska, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Montana, or Virginia, and (c) you paid your doctor for one or more of the drugs, but not if you paid a flat amount such as \$10 or \$20 per dose and not if you were fully reimbursed for your payment by a private insurer.

2. You are in the class if you are the legal heir of, or the legal successor to, the rights of a Medicare Part B beneficiary who met all three criteria set forth in "1" immediately above but who is now deceased. You need to consult your own lawyer to determine if you are the legal successor to any such rights. Your lawyer will help you determine whether you qualify as a "legal heir" under state laws of intestacy, will, trust, or any other applicable law.

3. You are in the class if (a) you were a Medicare Part B beneficiary between 1991 and the beginning of 2005, (b) who received one or more of the Covered Drugs during that

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

time period in a state other than the nine states listed above, and (c) incurred a “legal obligation” to pay your doctor a co-payment for one or more of the drugs but did not do so. You may have incurred a “legal obligation” if (a) your doctor billed either you or your insurer for one or more of the drugs but neither you nor your insurer paid, or (b) if you did not pay because your doctor did not bill you and (c) the time period for bringing a legal claim against you to enforce payment for one or more of the drugs has not already expired under the law.

IMPORTANT: This is not a bill or a collection notice. The Court is not suggesting, requesting or requiring that Medicare Part B beneficiaries who were billed for one or more of the aforementioned drugs but did not pay, or were not billed at all should pay their doctors now or that they are obligated to do so under the Medicare statute or regulations.

You are also not part of the Class if:

- (a) You were fully reimbursed for the co-payment you made (for example, your MediGap or other private insurer reimbursed you the full amount); *or*
- (b) Your co-payment was a flat amount instead of a percentage of the total charge (for example, your MediGap or other private insurer paid for all of the co-payment except for a flat amount such as \$10 or \$20 that you had to pay). If your co-payment is a set dollar amount and does not differ with the price of the drug, your co-payment is a flat co-payment and not a percentage co-payment and you are not a member of the class.

8. How do I know if my co-payment was under Medicare Part B?

If you are 65 or older, or are younger than 65 but receive social security benefits because of a disability, you are entitled to Medicare benefits. Medicare Part A is the primary coverage for your health care costs when you are admitted as a patient in a hospital, and enrollment is generally automatic at age 65.

Medicare Part B helps to pay primarily for outpatient services such as care given in your doctor’s office, outpatient hospital care, and physical therapy. Medicare Part B also has a limited drug benefit. For drugs that are covered under Part B, Medicare pays 80% of the drug cost, and you are responsible for paying the other 20% (which is your co-payment).

Generally, the drugs covered under Medicare Part B are ones that are administered by your doctor, such as cancer treatment drugs that are given through injections or an IV. But Part B also covers some drugs that are self-administered (ones that you take yourself). Those include some oral anti-cancer drugs in pill form, some pills prescribed to help with nausea or anemia in connection with chemotherapy and drugs provided with some durable medical equipment, such as inhalation drugs used with a nebulizer (a compressed air machine).

Like Part A, Medicare Part B coverage is also automatic, but you have the option to decline it. You pay a monthly premium for Medicare Part B coverage (which is typically deducted

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

from your social security check). You can tell if you're enrolled in Medicare Part B by looking at your Medicare insurance card. It will say if you are enrolled in Part B.

If you took one of the Covered Drugs when you were an inpatient in the hospital, you did not make a co-payment under Medicare Part B. However, if a Covered Drug was prescribed or administered by your doctor as a part of an outpatient treatment at a clinic, and you are enrolled in Medicare Part B, you may have been billed a co-payment of 20% of the drug cost if Medicare is your primary payer.

For the vast majority of people enrolled in Medicare, Medicare is the primary payer. Medicare is your secondary payer only if: (a) you or your spouse have continued to work after age 65 and have accepted the employer's health care insurance, or (b) you are a disabled person under 65 and have large group health plan coverage through your current job or the job of a family member. Unless either of these situations applies to you, your co-payment for a Covered Drug would have been under Medicare Part B.

WHAT ARE THE COVERED DRUGS?

9. How can I tell if the drug I took is included as a Covered Drug?

Most, but not all, of the Covered Drugs are ones that a doctor administers to you in the form of an injection – either through a shot, an IV, or an implant beneath the skin. A few are drugs that you take yourself, such as the pill forms of Cytosan, VePesid, and Alkeran – all cancer therapy drugs. Most of the Covered Drugs are used for the treatment of various types of leukemia and cancers of the breast, ovaries, cervix, prostate, testes, lung, brain, and bone marrow. Other Covered Drugs are used to treat nausea or anemia resulting from cancer therapy, asthma, migraines, heart problems, leukemia, herpes, psychoses, or rheumatoid arthritis.

The Covered Drugs in the Class, by Defendant, are listed below:

AstraZeneca

AstraZeneca, AstraZeneca Pharmaceuticals and AstraZeneca U.S.

Drug Name	Treatment	Dosages
Zoladex (molecule name)	Prostate and breast cancer; Endometriosis	<u>Implant</u> : 3.6mg <u>Injection (3 month)</u> : 10.8mg <u>Kit for injection</u> : 10.8mg syringe; 3.6mg syringe

Bristol-Myers Squibb Group

Bristol-Myers Squibb, Oncology Therapeutics Network and Apothecon

Drug Name	Treatment	Dosages
Blenoxane (molecule name)	Cancer of cervix and uterus, head and neck, or testicle and penile cancer; Hodgkin's disease	<u>Powder for Injection</u> : 15 Unit Vial; 30 Unit Vial
Cytosan (molecule name)	Cancer (primarily breast, ovarian); Leukemia; Nephrotic syndrome (kidney disease)	<u>Injection</u> : 100mg; 200 mg; 500mg; 1gm; 1x2gm; <u>Lyophilized Injection</u> : 100mg; 200mg; 500mg <u>Powder for Injection</u> : 500mg; 1gm; 2gm <u>Tablets</u> : 25mg; 50 mg
Etopophos (molecule name)	Lung and testicular cancer; Cancer of the lymph glands; Leukemia	<u>Powder for Injection</u> : 100mg
Paraplatin	Ovarian cancer	<u>Powder for Injection</u> : 50mg;

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

(molecule name)		150mg; 450mg
Rubex (molecule name)	Ovarian and breast cancer; Cancers of the bone, stomach, lung, bladder and thyroid; Leukemia	<u>Powder for Injection</u> : 10mg; 50mg; 100mg <u>Powder for Injection (Under Immunex label)</u> : 10mg; 50mg; 100mg
Taxol (molecule name)	Ovarian and breast cancer; Lung cancer; Kaposi's sarcoma	<u>Injection</u> : 30mg; 30mg/5ml; 300mg/50ml <u>Injection Solution</u> : 100mg; 100mg/16.7ml
VePesid (molecule name)	Testicular cancer; Small cell lung cancer	<u>Injection Solution</u> : 100mg; 150mg; 500mg; 1gm <u>Capsules</u> : 500mg

Johnson & Johnson Group

*Johnson & Johnson, Centocor, Ortho Biotech, McNeil-PPC
and Janssen Pharmaceutica Products*

Drug Name	Treatment	Dosages
Remicade (molecule name)	Rheumatoid arthritis; Crohn's disease; Ulcerative colitis	<u>Intravenous Injection</u> : 100 mg vial
Procit (molecule name)	Anemia (especially anemia due to chemotherapy or HIV)	<u>Solution for Injection</u> : 2,000 Unit/ml; 3,000 Unit/ml; 4,000 Unit/ml; 10,000 Unit/ml; 20,000 Unit/ml; 40,000 Unit/ml

Please carefully review the list of Covered Drugs. If your doctor gave you or prescribed one or more of these drugs in the listed forms and dosages during the time periods listed in Questions 7 and 8 you might be a member of the Class. To determine if you are a member of the Class please read Question 7 and 8.

[Defendants object to the inclusion of dosage information, which is confusing and unnecessary.]

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

YOUR RIGHTS – GETTING OUT OF THE CLASS ACTION

10. Can I get out of the lawsuit and the Class?

If you don't want to be in the Class and you want to keep the right to sue the Defendants about the same claims on your own, you must take steps to get out of the Class. This is called excluding yourself. By excluding yourself, you keep the right to file your own lawsuit or join another lawsuit against the Defendants about the claims in this lawsuit. You may exclude yourself from the litigation against one or more Defendants and remain in the litigation against the other Defendants.

11. How do I exclude myself from the Class?

To exclude yourself from the Class, you must send a letter signed by you that includes all of the following:

- Your name, address, and telephone number;
- The name and number of the lawsuit: *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, Docket No. 01-CV-12257-PBS;
- If you have hired your own lawyer, the name, address, and telephone number of your lawyer; and
- A statement that you want to be excluded from the Class, specifying whether you wish to exclude yourself from the litigation against all Defendants or just some of the Defendants. If you wish to exclude yourself from the litigation against less than all Defendants you must specify which Defendants by name.

Your exclusion letter must be mailed first class, **postmarked on or before September 15, 2006**, to:

AWP Litigation Administrator
P.O. Box xxx
City, State Zip code

Please remember that you can't exclude yourself by phone or by sending an email.

[Defendants object because Plaintiffs' failure to include an opt-out form will likely result in numerous incomplete opt out requests. Defendants' version provides an opt out form, which will ensure that responses provide necessary information.]

12. What happens if I exclude myself from the lawsuit?

If you exclude yourself from the Class, you will not get money or benefits from the Class if any are obtained from a settlement or trial of the lawsuit involving the remaining Defendants. If you exclude yourself, you're no longer part of the Class, and nothing that happens in the lawsuit affects you. But you can sue or be part of a different lawsuit against the Defendants about the claims in this case.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

If you do not exclude yourself, you will be bound by the result in the lawsuit. Thus, if Defendants win, your claim will be extinguished. Defendants claim that the persons and entities representing your interests do not have a valid claim, and if that is correct, your claim will be extinguished unless you exclude yourself.

[Defendants object. This section is repetitive, unnecessary and one-sided because it suggests that potential class members are making a choice between receiving money and not receiving money. If this section remains in the final version, it should read “If you exclude yourself from the Class, you will be not be bound by the results of the trial, whether favorable or unfavorable to the Class.”]

YOUR RIGHTS – APPEARING IN THE LAWSUIT

13. Can I appear or speak in this lawsuit?

As long as you don't exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit through your own lawyer. This is called making an appearance. Remember that you may have to pay for the lawyer yourself. If you appear in the lawsuit, you are still a member of the Class and can share in any benefits the Class might receive as a result of settlement or a trial.

14. How do I appear in this lawsuit?

If you want your own lawyer instead of Class Counsel to participate or speak for you in this lawsuit, your lawyer must give the Court a paper that is called a Notice of Appearance. The Notice of Appearance should include the name and number of the lawsuit, and state that you wish to enter an appearance in the lawsuit.

The Notice of Appearance must be filed with the Court at the following address:

Clerk of Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02210

Your Notice of Appearance should be filed with the Court before the beginning of the series of trials of each Defendant in this lawsuit. The first trial is currently scheduled to start on September 25, 2006.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

IF YOU DO NOTHING

15. What happens if I don't do anything at all?

If you do nothing, you stay in the Class and will be represented by Class Counsel. You will share in any benefits from the lawsuit if the Class wins at trial or settles the lawsuit, and you will be bound if the Class Representative loses. By staying in the Class, all of the Court's orders in the lawsuit will apply to you, including any decision on the trial. Please remember that staying in the Class means you can't sue the Defendants yourself about any of the claims in this lawsuit.

[Defendants object. Plaintiffs' version is incomplete and does not provide the necessary information for class members to make an informed decision about their rights.]

ACCORDINGLY, DEFENDANTS PROPOSE:

17. What If I Want to Remain A Member of One or More of the Classes

If you want to be a member of one or more of the classes, you do not need to do anything at this time. As a member of the class or classes, you will be bound by the results of the trial or trials, whether those results are favorable or unfavorable to the class or classes. You will not be permitted to later sue the Defendant(s) on your own. If the Defendant wins at trial, you will lose.

If the Plaintiffs win, you will proceed to the next phase of this litigation.

- a) If you are a class member who paid, you will have to present evidence on individual issues under the consumer protection laws of the state in which you reside. You will not receive any money unless you prove that you are a member of the class, that you paid a percentage co-payment, and the amount of the co-payment. Such evidence may include, among other things, an original bill and/or a cancelled check proving that you paid the co-payment.
- b) If you are an heir, you will have to first meet the requirements described in (a). Then, you will need to prove your legal status as an heir. This may be accomplished through a legal instrument such as a will, testamentary laws, or some other acceptable source.
- c) If you have a "legal obligation" to pay, but have not yet, you will have to present evidence on the facts and circumstances giving rise to what you say created your legal obligation. Such evidence may include an oral agreement with your doctor, a bill or invoice, or some other acceptable source. You will also be required to prove that your claim is not barred by the applicable statute of limitations before receiving any money.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

If you remain a member of a particular class or classes, you will be represented by lawyers appointed by the Court called Class Counsel (see #7 below) in connection with that class's litigation.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this lawsuit?

Yes. The Court has appointed the following law firms to represent you and other Class Members:

Hagens Berman Sobol Shapiro LLP
www.hagens-berman.com
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

and

One Main Street, 4th Floor
Cambridge, MA 02142

Mark H. Edelson
Edelson & Associates LLC
45 West Court Street
Doylestown, PA 18901

Spector Roseman & Kodroff, PC
www.srk-law.com
1818 Market Street, Suite 2500
Philadelphia, PA 19103

Wexler Toriseva Wallace LLP
www.wtwlaw.us
One North LaSalle St., Suite 2000
Chicago, IL 60602

Kline & Specter, PC
www.klinespecter.com
The Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102

These lawyers are called Class Counsel. You won't be charged personally for these lawyers, but they will ask the Court to award them a fee to be paid out of any recovery. More information about Class Counsel and their experience is available at the Web sites listed above.

17. Can you elaborate on who pays the lawyers and how much will they be paid?

If Class Counsel obtains money or benefits for the Class through a settlement or a successful trial, they will ask the Court for payment of attorneys' fees and expenses out of the total amount of money and benefits obtained. The Court must approve the amount of attorneys' fees and expenses. If Class Counsel doesn't obtain any money or benefits for the Class, they won't receive or ask to receive any attorneys' fees or reimbursement of expenses.

18. Should I get my own lawyer?

You don't need to hire your own lawyer, but if you want your own lawyer to speak for you or appear in Court, you must file a Notice of Appearance (*see* Question __ to find out how to submit a Notice of Appearance). If you hire a lawyer to appear for you in the lawsuit, you will have to make your own arrangement for that lawyer's compensation.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

GETTING MORE INFORMATION

19. Are more details and information available?

This Notice is just a summary of the lawsuit. More details are in the Complaint filed by Class Counsel, and the other legal documents that have been filed with the Court in this lawsuit. You can look at and copy these legal documents at any time during regular office hours at the Office of the Clerk of Court, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, Massachusetts 02210. Copies of some of the important documents, like the Complaint are also available on-line at www.AWPlitigation.net.

In addition, if you have any questions about the lawsuit or this Notice, you may:

- Visit the AWP Litigation Web site at www.AWPlitigation.net
- Call toll free 1-xxx-xxx-xxxx (hearing impaired call 1-yyy-yyy-yyyy)
- Write to: AWP Litigation Administrator, PO Box xxxx, City, State Zip code.

Defendants propose inclusion of the following caveat:

NOTE: The Court reviewed this Notice for accuracy. The Court has not reviewed any of the other materials described above and did not verify the accuracy of the information provided.

20. How will I be notified about the outcome of the trials?

Information about the trials will be posted on the Web site as appropriate. You may also register on the Web site or by mail to get notification of the outcome of the litigation and other significant occurrences associated with this case. To register by mail send a letter to the AWP Litigation Administrator at the address above. To register on the Web site, go to the site and access the "Registration" link on the Web site menu.

By Order of the United States District Court, District of Massachusetts.

Date: _____

The Honorable Judge Patti B. Saris

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

[Defendants object to the fact that Plaintiffs notice does not include clear opt out instructions.]

ACCORDINGLY, DEFENDANTS PROPOSE:

<u>OPT OUT FORM</u>	
<u>In re Pharmaceutical Industry Average Wholesale Price Litigation –</u> <u>v. AstraZeneca Pharmaceutical LP</u> Docket No. 01-CV-12257-PBS.	
Your Name:	Which of the Subject Drugs did you take?
Address:	If you did not take one of the Subject Drugs, are you the legal heir or successor of someone who did?
I would like to be excluded from the following Class(es):	
AstraZeneca Class	
Zoladex	<input type="checkbox"/>
Bristol-Myers Squibb Class	
Blenoxane	<input type="checkbox"/>
Cytosan	<input type="checkbox"/>
Etopophos	<input type="checkbox"/>
Paraplatin	<input type="checkbox"/>
Rubex	<input type="checkbox"/>
Taxol	<input type="checkbox"/>
VePesid	<input type="checkbox"/>
Johnson & Johnson Class	
Remicade	<input type="checkbox"/>
Procrit	<input type="checkbox"/>
Signature _____ Date _____	
MAIL BY [INSERT DATE] to: AWP Litigation Administrator PO Box XXX City, State, Zip Code	

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.